

Message Text

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ACTION DLOS-09

INFO OCT-01 EA-10 ISO-00 ACDA-12 AGRE-00 AID-05 CEA-01
CEQ-01 CG-00 CIAE-00 COME-00 DODE-00 DOTE-00
EB-08 EPA-01 SOE-02 DOE-11 FMC-01 TRSE-00 H-01
INR-07 INT-05 IO-13 JUSE-00 L-03 NSAE-00 NSC-05
NSF-01 OES-07 OMB-01 PA-01 PM-05 PRS-01 SP-02
SS-15 USIA-06 /135 W
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TO SECSTATE WASHDC 8532
INFO AMEMBASSY TOKYO

C O N F I D E N T I A L SEOUL 0081

E.O. 11652: GDS
TAGS: PLOS KS
SUBJ: ROK TERRITORIAL SEAS - AIDE MEMOIRE

FOLLOWING TEXT OF AIDE MEMOIRE PRESENTED TO EMBASSY BY ROK
MINISTER OF FOREIGN AFFAIRS JANUARY 5, 1978 (COMMENT SEPTTEL).

BEGIN TEXT:

REFERENCE IS MADE TO THE AIDE-MEMOIRE OF THE EMBASSY OF THE
UNITED STATES OF AMERICA DATED 12 DECEMBER 1977 CONCERNING
THE ESTABLISHMENT OF A TWELVE NAUTICAL MILE TERRITORIAL SEA
BY THE REPUBLIC OF KOREA.

1. THE GOVERNMENT OF THE REPUBLIC OF KOREA HAS THUS FAR
REFRAINED FROM TAKING ANY UNILATERAL ACTION ON THE ESTABLISHMENT
OF A TWELVE NAUTICAL MILE TERRITORIAL SEA IN ORDER TO
KEEP IN LINE WITH THE RULES OF INTERNATIONAL LAW GOVERNING
THE TERRITORIAL SEA AND REGRETTE, IN PARTICULAR, THE TENDENCY
ON THE PART OF SOME STATES TO DECLARE UNILATERALLY A TWO HUNDRED
NAUTICAL MILE ECONOMIC ZONE PENDING THE OUTCOME OF THE THIRD
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UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA.
THE KOREAN GOVERNMENT HAS, HOWEVER, BEEN COMPELLED TO
TAKE A NEW APPROACH CONCERNING THE MATTER OF TERRITORIAL
SEA AS A MAJORITY OF STATES HAVE ALREADY ADOPTED A TWELVE
NAUTICAL MILE TERRITORIAL SEA BREADTH ON THE BASIS OF A
SUBSTANTIAL CONSENSUS EMERGED AT THE THIRD UNITED NATIONS
CONFERENCE ON THE LAW OF THE SEA. A TRADITIONAL THREE

NAUTICAL MILE TERRITORIAL SEA, IN THE VIEW OF THE KOREAN GOVERNMENT, IS CONSIDERED TO HAVE GIVEN WAY TO A NEWLY EMERGED RULE OF TWELVE NAUTICAL MILE REGIME.

2. AS FOR THE PARTICULAR CONCERNS OF THE UNITED STATES GOVERNMENT WITH RESPECT TO THE KOREA AND CHEJU STRAITS, THE MINISTRY OF FOREIGN AFFAIRS WISHES TO INVITE THE ATTENTION OF THE UNITED STATES GOVERNMENT TO THE PROVISO OF ARTICLE 1 OF THE TERRITORIAL SEA BILL PASSED BY THE NATIONAL ASSEMBLY OF THE REPUBLIC OF KOREA ON 16 DECEMBER 1977 WHICH STIPULATES THAT "THE BREADTH OF THE TERRITORIAL SEA IN SPECIFIED AREAS OF THE SEA MAY BE DETERMINED OTHERWISE WITHIN THE LIMIT OF TWELVE NAUTICAL MILES IN ACCORDANCE WITH A PRESIDENTIAL DECREE." IT IS TO BE NOTED THAT THE PROVISO OF THE SAID ARTICLE IS DESIGNED TO MAINTAIN AN APPROPRIATE CORRIDOR OF THE HIGH SEAS IN THE KOREA STRAIT SO THAT NORMAL PASSAGE OF FOREIGN SHIPS THROUGH THE STRAIT MAY NOT BE AFFECTED.

THE KOREAN GOVERNMENT, ON THE OTHER HAND, WISHES TO DRAW A DISTINCTION BETWEEN THE CHEJU STRAIT AND THE KOREA STRAIT FOR THE FOLLOWING REASONS:

(A) THE CHEJU STRAIT IS FORMED BY ISLANDS OF THE REPUBLIC OF KOREA AND ITS MAINLAND;

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(B) ANOTHER HIGH SEAS ROUTE OF SIMILAR CONVENIENCE OTHER THAN THE CHEJU STRAIT WITH RESPECT TO NAVIGATIONAL AND HYDROGRAPHICAL CHARACTERISTICS EXISTS SEAWARD OF THE CHEJU ISLAND;

(C) THE WIDEST DISTANCE ACROSS THE CHEJU STRAIT IS FAR LESS THAN TWENTY-FOUR NAUTICAL MILES, AND WHEN A TWELVE NAUTICAL MILE BREADTH OF THE TERRITORIAL SEA IS ESTABLISHED FROM BOTH SIDES OF THE STRAIT THERE WILL REMAIN NO ROOM FOR A HIGH SEAS ROUTE TO EXIST.

IN THIS CONNECTION, IT IS FURTHER POINTED OUT THAT THE REGIME OF PASSAGE THROUGH THE STRAITS SHOULD NOT BE REGARDED AS AFFECTING THE LEGAL STATUS OF WATERS FORMING SUCH STRAITS OR THE EXERCISE BY THE STRAIT STATES OF THEIR SOVEREIGNTY OVER SUCH WATERS. PARAGRAPH 1 OF ARTICLE 34 OF THE INFORMAL COMPOSITE NEGOTIATING TEXT SUPPORTS THIS POINT IN CLEAR TERMS.

3. AS REGARDS THE PRIOR NOTIFICATION REQUIREMENT FOR A PARTICULAR CATEGORY OF FOREIGN SHIPS INTENDING TO

NAVIGATE THE TERRITORIAL SEA OF THE REPUBLIC OF KOREA, THE MINISTRY WISHES TO STATE THAT THE INTENTION OF THE KOREAN GOVERNMENT IS NOT TO HAMPER UNDULY THE RIGHT OF INNOCENT PASSAGE BUT ONLY TO SAFEGUARD THE SECURITY INTERESTS OF THE REPUBLIC OF KOREA WITHIN THE FRAMEWORK OF INTERNATIONAL LAW.

THE MINISTRY IS OF THE VIEW THAT THE NOTIFICATION REGIME AS PROVIDED FOR IN THE SAID BILL FOUND ITS WAY INTO NO SMALL NUMBER OF STATES' PRACTICE, AND IS EXPECTED TO RECEIVE WIDER RECOGNITION FOR ITS MERITS IN ACCOMMODATING BOTH THE SECURITY INTERESTS OF THE COASTAL STATES AND THE COMMUNITY INTERESTS OF THE WORLD AS A WHOLE.

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4. FINALLY, REFERENCE IS MADE TO ARTICLE 4 OF THE MUTUAL DEFENSE TREATY BETWEEN THE REPUBLIC OF KOREA AND THE UNITED STATES OF AMERICA OF 1953 AS IT RELATES TO THE NOTIFICATION REGIME REFERRED TO ABOVE. THE KOREAN GOVERNMENT HAS NO INTENTION OF REQUIRING THE UNITED STATES VESSELS TO GIVE "ADVANCE NOTICE" TO THE AUTHORITIES OF THE KOREAN GOVERNMENT INASMUCH AS THEY ARE DISPOSED "IN AND ABOUT THE TERRITORY OF THE REPUBLIC OF KOREA" IN ACCORDANCE WITH ARTICLE 4 OF THE SAID TREATY.

5 JANUARY 1978.

END TEXT.
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